

726.7002

using other than full and open competition.

[58 FR 8702, Feb. 17, 1993. Redesignated and amended at 61 FR 39093, July 26, 1996.]

726.7002 Definitions.

(a) *Controlled by socially and economically disadvantaged individuals* means management and daily business are controlled by one or more such individuals.

(b) *Disadvantaged enterprises* means U.S. organizations or individuals that are:

(1) Business concerns (as defined in FAR 19.001) owned and controlled by socially and economically disadvantaged individuals;

(2) Institutions designated by the Secretary of Education, pursuant to 34 CFR 608.2, as historically black colleges and universities;

(3) Colleges or universities having a student body in which more than 40 percent of the students are Hispanic American; or

(4) Private voluntary organizations which are controlled by individuals who are socially and economically disadvantaged.

(c) *Economically disadvantaged individuals* has the same meaning as in FAR 19.001, except that the term includes women.

(d) *Owned by socially and economically disadvantaged individuals* means at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals.

(e) *Small disadvantaged business* means a small business concern (as defined in FAR 19.001) that is at least 51 percent unconditionally owned by one or more individuals who are both socially and economically disadvantaged (as defined in this section), or a publicly owned business that has at least 51 percent of its stock unconditionally owned by one or more socially and economically disadvantaged individuals (as defined in this section) and that has its management and daily business controlled by one or more such individuals.

48 CFR Ch. 7 (10-1-96 Edition)

(f) *Socially disadvantaged individuals* has the same meaning as in FAR 19.001, except that the term includes women.

[56 FR 27209, June 13, 1991, as amended at 56 FR 52212, Oct. 18, 1991. Redesignated at 61 FR 39093, July 26, 1996]

726.7003 Policy.

AID promotes participation in its projects by disadvantaged enterprises. In order to achieve the goals in foreign assistance appropriation acts, contracts which are to be funded from amounts made available for development assistance and for famine recovery and development in Africa are subject to the following policies:

(a) Authority in section 8(a) of the Small Business Act (15 U.S.C. 637(a)) shall be used to the maximum practicable extent;

(b) Other than full and open competition in contracting with certain disadvantaged enterprises shall be authorized in accordance with 706.302-71;

(c) Subcontracting with disadvantaged enterprises shall be carried out in accordance with subpart 726.3;

(d) In accordance with 705.207, the Office of Small and Disadvantaged Business Utilization (OSDBU) shall be notified at least seven business days before publicizing a proposed procurement in excess of \$100,000.

[56 FR 27209, June 13, 1991. Redesignated at 61 FR 39093, July 26, 1996.]

726.7004 Determination to use other than full and open competition.

The determinations required in order to use the authority under 706.302-71 for other than full and open competition shall be made by the contracting officer in consultation with the Director of OSDBU. In the event of a disagreement between the contracting officer and the Director of OSDBU, the head of the contracting activity shall make the final determination.

[55 FR 8470, Mar. 8, 1990. Redesignated at 61 FR 39093, July 26, 1996.]

726.7005 Exceptions.

The notification requirement in 705.207 and the subcontracting requirement in 726.301 are based on statutory requirement and may not be deviated from under the provisions of subpart

701.4. By statute, the Administrator or designee may determine that these requirements do not apply to a particular contract or category of contracts. The Procurement Executive has been designated to make such determinations. One such determination concerning subcontracting is set out in 726.301(b).

[58 FR 8702, Feb. 17, 1993. Redesignated at 61 FR 39093, July 26, 1996.]

726.7006 Determination of status as a disadvantaged enterprise.

(a) To be eligible for an award under AIDAR 706.302-71 providing for other than full and open competition, the contractor must qualify, as of both the date of submission of its offer and the date of contract award, as a small disadvantaged business (as defined in 726.101), an historically black college or university, a college or university in which more than 40 percent of the students are Hispanic Americans, or a private voluntary organization controlled by individuals who are socially and economically disadvantaged. The contracting officer shall insert the provision at 752.226-1 in any solicitation or contract to be awarded under the provisions of 706.302-71.

(b) The contracting officer shall accept an offeror's representations and certifications under the provisions referenced above that it is a small disadvantaged business unless he or she determines otherwise based on information contained in a challenge of the offeror's status by the Small Business Administration or another offeror, or otherwise available to the contracting officer.

[55 FR 8470, Mar. 8, 1990, as amended at 56 FR 27209, June 13, 1991. Redesignated at 61 FR 39093, July 26, 1996.]

726.7007 Requirement for subcontracting with disadvantaged enterprises.

(a) In addition to the requirements in FAR subpart 19.7, any new contract or modification which constitutes new procurement (except for a contract or modification with a disadvantaged enterprise as defined in 726.101) with respect to which more than \$500,000 is to be funded with amounts made available for development assistance or for assistance for famine recovery and development in Africa shall contain a provi-

sion requiring that not less than ten percent of the dollar value of the contract must be subcontracted to disadvantaged enterprises, including disadvantaged enterprises which are not small.

(b) This requirement does not apply when the contracting officer, with the concurrence of the Director of OSDBU, certifies there is no realistic expectation of U.S. subcontracting opportunities and so documents the file. If the contracting officer and the Director of OSDBU do not agree, the determination will be made by the head of the contracting activity. See 726.104 for guidance on other potential exceptions.

(c) The contracting officer shall insert the clause in 752.226-2 in any solicitation or contract as provided in paragraph (a) of this section, unless exempted in accordance with the provisions of paragraph (b) of this section.

[55 FR 8470, Mar. 8, 1990, as amended at 56 FR 27209, June 13, 1991; 56 FR 52213, Oct. 18, 1991; 58 FR 42255, Aug. 9, 1993. Redesignated at 61 FR 39093, July 26, 1996.]

726.7008 Limitations on subcontracting.

The contracting officer shall insert the clause at 752.226-3, Limitations on Subcontracting, in any solicitation and contract for technical assistance services which is to be awarded under the authority of 706.302-71.

[58 FR 42255, Aug. 9, 1993. Redesignated at 61 FR 51235, Oct. 1, 1996]

EFFECTIVE DATE NOTE: At 61 FR 51235, Oct. 1, 1996, section 726.7008 was redesignated from section 726.301, effective Oct. 31, 1996.

Subpart 726.71—Relocation of U.S. Businesses, Assistance to Export Processing Zones, Internationally Recognized Workers' Rights

726.7101 Policy.

USAID Policy Determination (PD) 20, "Guidelines to Assure USAID Programs do not Result in the Loss of Jobs in the U.S." implemented statutory prohibitions on expenditure of appropriated funds. The PD contains a standard provision for inclusion in USAID-funded grants and inter-agency agreements and indicates that when

726.7102

the PD applies to a contract, appropriate provisions covering the subject matter are to be included. When the provisions of PD 20 do apply to a contract, the cognizant technical office shall provide to the contracting officer appropriate language tailored to the specific circumstances for the contract statement of work, or if applicable to the circumstances, the provision included in the PD (see 726.7102) may be used as a clause in the contract. The provision is not required in sub-contracts.

[61 FR 39093, July 26, 1996]

726.7102 PD 20 provision.

RELOCATION OF U.S. BUSINESSES, ASSISTANCE
TO EXPORT PROCESSING ZONES, INTER-
NATIONALLY RECOGNIZED WORKERS' RIGHTS
(JAN 1994)

No funds or other support provided here-
under may be used in an activity reasonably

48 CFR Ch. 7 (10-1-96 Edition)

likely to involve the relocation or expansion outside of the United States of an enterprise located in the United States if non-U.S. production in such relocation or expansion replaces some or all of the production of, and reduces the number of employees at, said enterprise in the United States.

No funds or other support provided here-
under may be used in an activity the purpose
of which is the establishment or develop-
ment in a foreign country of any export
processing zone or designated area where the
labor, environmental, tax, tariff, and safety
laws of the country would not apply, without
the prior approval of USAID.

No funds or other support provided here-
under may be used in an activity which con-
tributes to the violation of internationally
recognized rights of workers in the recipient
country, including those in any designated
zone or area in that country.

[61 FR 39093, July 26, 1996]

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 728—BONDS AND INSURANCE

Subpart 728.1—Bonds

Sec.

728.105-1 Advance payment bonds.

Subpart 728.3—Insurance

728.305-70 Overseas worker's compensation and war-hazard insurance—waivers and A.I.D. insurance coverage.

728.307-2 Liability.

728.307-70 Medical Evacuation (MEDEVAC) Services (Mar 1993).

728.309 Contract clause for worker's compensation insurance.

728.313 Contract clauses for insurance of transportation or transportation-related services.

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 445, (22 U.S.C. 2381) as amended; E.O. 12163, Sept. 29, 1979, 44 FR 56673; 3 CFR, 1979 Comp., p. 435.

SOURCE: 49 FR 13249, Apr. 3, 1984, unless otherwise noted.

Subpart 728.1—Bonds

728.105-1 Advance payment bonds.

(a) Generally, advance payment bonds will not be required in connection with AID contracts containing an advance payment provision. In lieu thereof, contracting officers will follow procedures set forth in FAR 32.409-3.

(b) Whenever a contracting officer considers that an advance payment bond is necessary, the contracting officer will: (1) Establish a bond penalty that will adequately protect interests of the Government, (2) use the AID Advance Payment Bond format, (3) place bond with a surety currently approved by the U.S. Treasury Department according to the latest Treasury Department Circular 570, (4) stipulate that the cost of the bond shall not exceed a rate of \$7.50 per \$1,000 per annum based on the penalty of the bond, without the prior written approval of the Office of Procurement, Policy Division (M/OP/P).

(c) Where the surety's obligation under an advance payment bond covers all advances made to the contractor

during the term of the contract, no release should be issued to the surety until all advances made and to be made under the contract have been fully liquidated in accordance with the provisions of the contract, such as no-pay vouchers, reports of expenditures, or by refund. Where the surety's obligation under the bond is limited to advances made during a specified period of time, no release should be issued to the surety until all advances made and to be made during the specified period have been liquidated as aforesaid.

[49 FR 13249, Apr. 3, 1984, as amended at 50 FR 50302, Dec. 10, 1985; 55 FR 6802, Feb. 27, 1990; 56 FR 67224, Dec. 30, 1991; 59 FR 33446, June 29, 1994]

Subpart 728.3—Insurance

728.305-70 Overseas worker's compensation and war-hazard insurance—waivers and A.I.D. insurance coverage.

(a) Upon the recommendation of the AID Administrator, the Secretary of Labor may waive the applicability of the Defense Base Act (DBA) with respect to any contract, subcontract, or subordinate contract, work location, or classification of employees. Either the contractor or AID can request a waiver from coverage. Such a waiver can apply to any employees who are not U.S. citizens, not residents of, or not hired in the United States. Waivers requested by the contractor are submitted to the contracting officer for approval and further submission to the Department of Labor, which grants the waiver. Application for a waiver is submitted on Labor Department Form BEC 565. AID has a number of blanket waivers already in effect for certain countries that are applicable to its direct contracts with contractors performing in such countries. Where such waivers are granted from coverage under the DBA, the waiver is conditioned on providing other worker's compensation coverage to employees to which the waiver applies. Usually this takes the form of securing worker's compensation coverage

of the country where work will be performed or of the country of the employee's nationality, whichever offers greater benefits. The Department of Labor has granted partial blanket waivers of DBA coverage applicable to AID-financed contracts performed in certain countries, subject to two conditions:

(1) Employees hired in the United States by the contractor, and citizens or residents of the United States are to be provided DBA insurance coverage;

(2) Waived employees (i.e., employees who are neither U.S. citizens nor U.S. resident aliens, and who were hired outside the United States) will be provided worker's compensation benefits as required by the laws of the country in which they are working or the laws of their native country, whichever offers greater benefits. Information as to whether a DBA Waiver has been obtained by AID for a particular country may be obtained from the cognizant AID contracting officer.

(b) To assist contractors in securing insurance at minimal rates for the workmen's compensation insurance required under the DBA, and to facilitate meeting insurance requirements for such coverage, AID, after open and competitive negotiation, has entered into a contract with an insurance carrier to provide such coverage at a specified rate. The terms of this contract require the insurance carrier to provide coverage, and the contractor to make payments to and handle its claims with that insurance carrier. Contracting officers are responsible for explaining and advising contractors of the details of securing such insurance.

[49 FR 13249, Apr. 3, 1984, as amended at 52 FR 4144, Feb. 10, 1987. Redesignated at 53 FR 50630, Dec. 16, 1988, and amended at 54 FR 16122, Apr. 21, 1989; 56 FR 67224, Dec. 30, 1991]

728.307-2 Liability.

(a)-(b) [Reserved]

(c) *Automobile liability.* In order to ensure that private automobiles used by contractor employees stationed overseas under an A.I.D. contract are properly insured, A.I.D. has established minimum required coverages as a supplement to the FAR clause at 52.228-7. This supplemental coverage is specified in AIDAR 752.228-7, and is to be used in

all A.I.D.-direct contracts involving performance overseas.

[53 FR 50630, Dec. 16, 1988]

728.307-70 Medical Evacuation (MEDEVAC) Services (Mar 1993).

The Contracting Officer shall insert the clause at 752.228-70 in all contracts which require performance by contractor employees overseas.

[59 FR 33446, June 29, 1994]

728.309 Contract clause for worker's compensation insurance.

(a) Because of the volume of projects performed overseas resulting in contracts which require worker's compensation insurance, A.I.D. has contracted with an insurance carrier to provide the required insurance for all A.I.D. contractors. It is therefore necessary to supplement the FAR clause at 52.228-3 with the additional coverage specified in AIDAR 752.228-3. The coverage specified in AIDAR 752.228-3 shall be used in addition to the coverage specified in FAR 52.228-3 in all A.I.D.-direct contracts involving performance overseas.

[53 FR 50630, Dec. 16, 1988]

728.313 Contract clauses for insurance of transportation or transportation-related services.

(a) A.I.D. is required by law to include language in all its direct contracts and subcontracts ensuring that all U.S. marine insurance companies have a fair opportunity to bid for marine insurance when such insurance is necessary or appropriate under the contract. A.I.D. has therefore established a supplementary preface to the clause at FAR 52.228-9. This supplementary preface is set forth in AIDAR 752.228-9, and is required for use in any A.I.D.-direct contract where marine insurance is necessary or appropriate.

[53 FR 50630, Dec. 16, 1988]

PART 731—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 731.1—Applicability

Sec.

731.109 Advance agreements.